IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 7TH DECEMBER 2007 / 16TH AGRAHAYANA 1929

MFA.No. 1088 of 2001(B)

O.P(MV).NO.552/1996 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR.
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APPELLANT/ PETITIONER:

M.A. BAIJU, S/O. ALPHONSE,
MANDAKKAL HOUSE, P.O. INCHAKUNDU,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU,
ADV. SMT.ROHINI V.MENON.

RESPONDENTS/ RESPONDENTS:
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1. **K.U. SAJITHRAN,**
KOZHIMADAN HOUSE,
P.O. ANCHERI,
THRISSUR DISTRICT.

2. **OUSEPH. K.O.,**
S/O. KALLUKKARAN OUSEPH,
UPPUZHY DESOM, MUPLIYAM VILLAGE,
THRISSUR DISTRICT.

3. **BRANCH MANAGER,**
NEW INDIA ASSURANCE CO. LTD.,
KUNNAMKULAM, THRISSUR.

BY ADV. SRI.JIJO PAUL,
ADV. SRI.P.JAYASANKAR.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. Koshy & K.Hema, JJ.

M.F.A.No. 1088 of 2001

Dated this the 7th day of December, 2007

Judgment

Koshy,J.

Appellant filed an application for compensation before the Motor Accidents Claims Tribunal claiming an amount of Rs.5,57,000/- limited to Rs.4,00,000/- for the injuries sustained by him in a road accident on 18.2.1995. While he was pedalling a bicycle along the road at Pathukulangara, he was knocked down by an autorickshaw bearing registration No.KL-8A 5666 driven by the second respondent, owned by the first respondent and insured by the third respondent insurance company. The tribunal awarded only a compensation of Rs.1,77,100/-. Since the second respondent was not holding a valid driving licence to drive an autorickshaw, third respondent insurance company was directed to deposit the amount and to recover it from the insured, first respondent in execution of the award. The only dispute raised by the claimant is regarding the quantum of compensation.

2. Neither the first respondent nor the second respondent filed an appeal from the award. With regard to the

injuries, the tribunal has considered the aspect in detail as follows:

> "After the accident the petitioner was taken to Aswini Hospital, Thrissur as evident from Ext.A9 wound certificate. He had history of loss of consciousness after the accident. There were lacerated wounds on different parts of the face including the right eye lid and there was sub-conjuntival haemorrage also. There was mobility to the upper incisor. There was abrasion and loss of skin on the dorsum of right foot also. X-ray revealed fracture to the infra orbital region. Ext.X1 case sheet would reveal that he was subsequently treated at Medical College Hospital from 20.5.1995 where the fracture to the infra orbital wall was confirmed. There he had undergone a surgery on 23.5.1995 for the correction of the floor of the orbit. He was discharged on 26.5.1995. Ext.A15 is the discharge summary issued by the Aravind Eye Hospital, Madurai which would go to show that he was treated there from 29.11.1995 to 2.12.1995. There also he had undergone one surgery."

The tribunal has awarded Rs.15,000/- for pain and suffering. We are of the opinion that no enhancement is required in the amount fixed by the tribunal on that count. For loss of amenities in life, another Rs.15,000/- was awarded by the tribunal as he was forced to take rest for six months. He was a B.Com., student in a parallel college. Rs.5,000/- was awarded for loss of studies. We are of the opinion that no enhancement is required on this count also. Appellant has produced Ext.A2 certificate issued by the Medical Board assessing

30% disability as he has lost vision. Since the appellant has passed B.Com., degree after the accident. The tribunal has fixed a notional income of Rs.21,000/- and assessed compensation taking a multiplier of 17 and fixed Rs.1,07,100/- as the compensation for permanent disability. The tribunal has also awarded Rs.25,000/- for loss of amenities and loss of marriage prospects. The tribunal has also awarded reimbursement of medical bills actually produced. It is submitted that by the nature of injuries, he has to take continued treatment. He was treated in Madurai. He was first treated in Aswini Hospital and then he was treated in Medical College and thereafter in Aravind Hospital, Madurai. No compensation was awarded for transportation expenses. He had undergone inpatient treatment and there will be many expenses in the hospital which are not covered by actual bills. For future medical expenses, no amount was granted. Considering the surgeries undergone by him and also treatment in various hospitals and nature of injuries, we are of the opinion that Rs.15,000/- has to be awarded to the appellant for transportation expenses as well as medical expenses incurred and for future medical expenses over and above the amount decreed by the tribunal. The above amount of Rs.15,000/- also should be deposited by the third respondent insurance

company with 7.5% interest from the date of application till its deposit over and above the amount decreed by the tribunal. On deposit of the amount, the third respondent insurance company is entitled to realise the same from the first respondent insured. On deposit of the above amount, the appellant is allowed to withdraw the amount.

J.B.Koshy
Judge

K. Hema
Judge

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1088 of 2001

Judgment

Dated:7th December, 2007